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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC.,
MARVEL CHARACTERS, INC. and
MVL RIGHTS, LLC,

Plaintiffs,

-against-

LISA R. KIRBY, BARBARA J. KIRBY,
NEAL L. KIRBY and SUSAN M. KIRBY,

Defendants.

Civil Action No. 10-141 (CM) (KF)

[Hon. Colleen McMahon]

[ECF Case]

**REPLY DECLARATION OF MARC TOBEROFF, ESQ. IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

I, Marc Toberoff, hereby declare as follows:

1. I am familiar with the facts set forth below and make this declaration in further support of defendants' Motion to Dismiss. The facts set forth herein are known to me of my own personal firsthand knowledge and, if called as a witness, I could and would testify competently thereto under oath.

2. I am an attorney and the founding partner of Toberoff & Associates, P.C., located at 2049 Century Park East, Suite 2720, Los Angeles, California, 90067.

3. My firm represents Lisa R. Kirby, Barbara J. Kirby, Neal L. Kirby and Susan M. Kirby (the "Kirbys"), the children of legendary comic book artist and writer Jack Kirby (a.k.a. Jacob Kurtzberg).

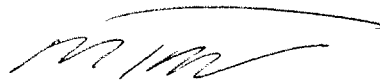
4. On September 16, 2009, the Kirbys availed themselves of their right under the Copyright Act to recapture their father's copyright interests by serving 45 notices of termination ("Termination Notices") by first class mail on The Walt Disney Company, plaintiffs and all of their known predecessors and successors-in-interest pursuant to 17 U.S.C. § 304(c) and 37 C.F.R. § 201.10(d). The Termination Notices were researched and prepared by my firm in Los Angeles, California and mailed from Los Angeles, California. The Termination Notices were sent to a total of 53 different addresses, 13 of which were in New York.

5. The Termination Notices have varying "effective termination dates." The earliest effective termination date is September 7, 2014 for *Tales of Suspense* and *Tales to Astonish* comics. However, the effective termination dates for all of Jack Kirby's most famous works and characters (e.g., *Fantastic Four*, *The Hulk*, *X-Men* and *Thor*) fall between 2017-2019. In order for the Termination Notices to be valid and effective, the

Kirbys are required by 17 U.S.C. § 304(c)(4)(A) to file copies of the Termination Notices with the U.S. Copyright Office prior to the respective “effective termination date” of each notice. Because the Termination Notices do not become effective until well into the future, none of the Termination Notices have been filed yet with the U.S. Copyright Office.

I declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Dated: April 6, 2010

A handwritten signature in black ink, appearing to read 'M Toberoff', is written above a horizontal line.

Marc Toberoff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served electronically by the Court's ECF system and by first class mail on those parties not registered for ECF pursuant to the rules of this Court.

Dated: April 6, 2010

TOBEROFF & ASSOCIATES, P.C.

By: s/Marc Toberoff
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